

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Eon-Net, L.P.,
Plaintiff,
v.
Flagstar Bancorp,
Defendant.

CASE NO. C 05-2129 RSM

**DECLARATION OF MELISSA J.
BAILY IN SUPPORT OF
FLAGSTAR'S MOTION FOR
ATTORNEYS' FEES AND COSTS**

**NOTE ON MOTION CALENDAR:
MAY 8, 2009**

1 I, Melissa J. Baily, declare as follows:

2 1. I am an attorney admitted to practice in the State of California and the State of
3 New York, and I am a member of the law firm of Quinn Emanuel Urquhart Oliver & Hedges,
4 LLP. I represent Flagstar Bancorp (“Flagstar”) in this action. Except as otherwise stated, I have
5 personal firsthand knowledge of the matters set forth in this Declaration, and if called as a
6 witness I would testify competently to those matters.

7 2. Attached hereto as Exhibit A is a true and correct copy of United States Patent
8 Number 6,683,697.

9 3. Attached hereto as Exhibit B is a true and correct copy of a letter from Eon-Net
10 L.P.’s outside counsel Jean-Marc Zimmerman to Flagstar’s Assistant General Counsel Kristina
11 Maritzak, dated March 2, 2005.

12 4. As of February 4, 2005, Eon-Net, L.P. had filed at least eight patent infringement
13 complaints that were substantially identical to the complaint filed against Flagstar. Those
14 complaints were filed in the following cases:

- 15 • *Eon-Net, L.P. v. Black Hound New York*, Case No. 1:2004 cv 03667 (S.D.N.Y.)
16 (complaint dated May 12, 2004)
- 17 • *Eon-Net, L.P. v. Homecenter.com*, Case No. 1:2004 cv 03665 (S.D.N.Y.)
18 (complaint dated May 12, 2004)
- 19 • *Eon-Net, L.P. v. Babyage.com*, Case No. 3:2004 cv 03738 (D.N.J.) (complaint
20 dated August 3, 2004)
- 21 • *Eon-Net, L.P. v. Beach Camera, Inc.*, Case No. 3:2004 cv 03778 (D.N.J.)
22 (complaint dated August 3, 2004)
- 23 • *Eon-Net, L.P. v. Drugstore.com, Inc.*, Case No. 2:2005 cv 00845 (D.N.J.)
24 (complaint dated February 4, 2005)
- 25 • *Eon-Net, L.P. v. ING Bank*, Case No. 1:2005 cv 02049 (S.D.N.Y.) (complaint
26 dated February 4, 2005)
- 27 • *Eon-Net, L.P. v. Random House, Inc.*, Case No. 7:2005 cv 01977 (S.D.N.Y.)
(complaint dated February 4, 2005)
- *Eon-Net, L.P. v. RedEnvelope, Inc.*, Case No. 1:2005 cv 01954 (S.D.N.Y.)
(complaint dated February 4, 2005)

1 The complaints filed in these cases were previously before this Court as Exhibits C through J to
2 the Declaration of Melissa J. Baily in Support of Flagstar's Motion for Sanctions Pursuant to
3 Federal Rule of Civil Procedure 11 (DN 43). A review of the dockets associated with these cases
4 indicates that the claims of patent infringement were not resolved on the merits.

5 5. Attached hereto as Exhibit C is a true and correct copy of a letter from Eon-Net
6 L.P.'s outside counsel Jean-Marc Zimmerman to Nathan Garnett of Drugstore.com, Inc., dated
7 March 1, 2005.

8 6. Attached hereto as Exhibit D is a true and correct copy of a document produced
9 by Eon-Net, L.P. in this litigation. It purports to be a Settlement Agreement between
10 RedEnvelope, Inc. and Eon-Net, L.P.

11 7. Attached hereto as Exhibit E is a true and correct copy of the Declaration of Jason
12 B. Dufner in Support of Defendant Flagstar's Motion for Sanctions Pursuant to Federal Rule of
13 Civil Procedure 11. Mr. Dufner's Declaration was previously before the Court (DN 44). In his
14 Declaration, Mr. Dufner states that he participated in Flagstar's investigation regarding Eon-
15 Net's patent infringement complaint and that Flagstar found that the relevant technologies had
16 been licensed from Kofax Image Products, Inc. ("Kofax").

17 8. Upon completing its internal investigation regarding Eon-Net, L.P.'s complaint
18 alleging patent infringement, Flagstar contacted Kofax Image Products, Inc. Kofax's outside
19 counsel, Paul Gale of Stradling Yocca Carlson & Rauth, informed Flagstar that Kofax had
20 entered into a relevant Settlement and License Agreement with Millennium, L.P., which granted
21 Kofax and Kofax customers a non-exclusive irrevocable license to any patent rights ever
22 acquired or assigned by Millennium, L.P. Flagstar served a subpoena on Kofax requesting
23 production of the Settlement and License Agreement.

24 9. Attached hereto as Exhibit F is a true and correct copy of an email dated April 13,
25 2006 from Eon-Net, L.P.'s outside counsel Jean-Marc Zimmerman to Kofax's outside counsel
26 Paul Gale. In that email, Mr. Zimmerman instructed Kofax not to produce any documents in
27 response to Flagstar's subpoena.

1 10. Attached as Exhibit G is a true and correct copy of the Settlement and License
2 Agreement as produced by Kofax.

3 11. Attached as Exhibit H is a true and correct copy of a letter dated April 17, 2006
4 from Eon-Net, L.P.'s outside counsel Jean-Marc Zimmerman to Kofax's outside counsel Paul
5 Gale concerning disclosure of the Settlement and License Agreement.

6 12. Attached as Exhibit I is a true and correct copy of a letter from me to Eon-Net,
7 L.P.'s outside counsel Jean-Marc Zimmerman, dated April 19, 2006, which references Eon-Net's
8 attempt to conceal the Settlement and License Agreement.

9 13. Attached as Exhibit J is a true and correct copy of a letter from Kofax's outside
10 counsel Paul Gale to Eon-Net L.P.'s outside counsel Jean-Marc Zimmerman, dated February 7,
11 2006.

12 14. Attached hereto as Exhibit K is a true and correct copy of a letter from me to Eon-
13 Net, L.P.'s outside counsel Jean-Marc Zimmerman, dated March 21, 2006.

14 15. Attached hereto as Exhibit L is a true and correct copy of an email from Flagstar's
15 outside counsel Jon Steiger to Eon-Net, L.P.'s outside counsel Jean-Marc Zimmerman, dated
16 April 24, 2006.

17 16. Attached hereto as Exhibit M is a true and correct copy of a letter from Eon-Net,
18 L.P.'s outside counsel Jean-Marc Zimmerman to me, dated March 22, 2006.

19 17. As of May 4, 2006, Eon-Net, L.P. had filed at least sixteen patent infringement
20 complaints that were substantially identical to the complaint filed against Flagstar. Those
21 complaints were filed in the cases listed above in paragraph 4 and in the following cases:

- 22 • *Eon-Net, L.P. v. CoolAnimalStuff.com*, Case No. 2:2005 cv 00936 (D.N.J.)
23 (complaint dated February 16, 2005)
- 24 • *Eon-Net, L.P. v. Sawhorse Enterprises, Inc.*, Case No. 1:2005 cv 08340
25 (S.D.N.Y.) (complaint dated September 26, 2005)
- 26 • *Eon-Net, L.P. v. SomethingSexyPlanet.com*, Case No. 1:2005 cv 08471
27 (S.D.N.Y.) (complaint dated September 26, 2005)
- *Eon-Net, L.P. v. A18 Corp.*, Case No. 1:2006 cv 00536 (S.D.N.Y.) (complaint
 dated January 18, 2006)

- 1 • *Eon-Net, L.P. v. Linen ‘n Things, Inc.*, Case No. 2:2006 cv 00315 (D.N.J.)
(complaint dated January 18, 2006)
- 2 • *Eon-Net, L.P. v. Brother International Corporation (U.S.A.)*, Case No. 3:2006 cv
3 00376 (D.N.J.) (complaint dated January 20, 2006)
- 4 • *Eon-Net, L.P. v. Edmund Optics Inc.*, Case No. 1:2006 cv 00584 (D.N.J.)
(complaint dated February 3, 2006)
- 5 • *Eon-Net, L.P. v. Sommers Plastic Products Co.*, Case No. 2:2006 cv 00826
6 (D.N.J.) (complaint dated February 17, 2006)

7 Attached hereto as Exhibit N is a true and correct copy of the complaint filed against
8 CoolAnimalStuff.com. The complaints filed in the other cases enumerated in this paragraph
9 were previously before this Court as Exhibits K through Q to the Declaration of Melissa J. Bailly
10 in Support of Flagstar’s Motion for Sanctions Pursuant to Federal Rule of Civil Procedure 11
11 (DN 43). A review of the dockets associated with these cases indicates that the claims of patent
12 infringement were not resolved on the merits.

13 18. Attached hereto as Exhibit O is a true and correct copy of a letter from Eon-Net
14 L.P.’s outside counsel Jean-Marc Zimmerman to CoolAnimalStuff.com, dated March 4, 2005.

15 19. Attached hereto as Exhibit P is a true and correct copy of a document produced by
16 Eon-Net, L.P. in this litigation. It purports to be a Settlement Agreement between
17 NeonGecko.com Inc., operator of the www.coolanimalstuff.com web site, and Eon-Net, L.P.

18 20. As of October 4, 2006, Eon-Net, L.P. had filed at least twenty-eight patent
19 infringement complaints that were substantially identical to the complaint filed against Flagstar.
20 Those complaints were filed in the cases listed above in paragraphs 4 and 17 and in the
21 following cases:

- 22 • *Eon-Net, L.P. v. JetBlue Airways Corp.*, Case No. 1:2006 cv 02463 (E.D.N.Y.)
23 (complaint dated May 16, 2005)
- 24 • *Eon-Net, L.P. v. Hammacher Schlemmer & Company, Inc.*, Case No. 1:2006 cv
25 06133 (S.D.N.Y.) (complaint dated July 11, 2006)
- 26 • *Eon-Net, L.P. v. D’Agostino Supermarkets, Inc.*, Case No. 1:2006 cv 06045
27 (S.D.N.Y.) (complaint dated July 11, 2006)
- *Eon-Net, L.P. v. FootLocker, Inc.*, Case No. 1:2006 cv 05975 (S.D.N.Y.)
(complaint dated July 11, 2006)

- 1 • *Eon-Net, L.P. v. Sony Corporation of America*, Case No. 1:2006 cv 05891
2 (S.D.N.Y.) (complaint dated July 11, 2006)
- 3 • *Eon-Net, L.P. v. Anadigics, Inc.*, Case No. 3:2006 cv 03655 (D.N.J.) (complaint
4 dated July 11, 2006)
- 5 • *Eon-Net, L.P. v. Liz Claiborne, Inc.*, Case No. 2:2006 cv 03670 (D.N.J.)
6 (complaint dated July 11, 2006)
- 7 • *Eon-Net, L.P. v. Sys-Con Media*, Case No. 2:2006 cv 03709 (D.N.J.) (complaint
8 dated July 11, 2006)
- 9 • *Eon-Net, L.P. v. John Wiley & Sons, Inc.*, Case No. 2:2006 cv 03785 (D.N.J.)
10 (complaint dated July 18, 2006)
- 11 • *Eon-Net, L.P. v. Staples Inc.*, Case No. 2:2006 cv 03899 (D.N.J.) (complaint dated
12 August 4, 2006)
- 13 • *Eon-Net, L.P. v. Barnes & Noble, Inc.*, Case No. 1:2006 cv 06271 (S.D.N.Y.)
14 (complaint dated August 14, 2006)

15 The complaints filed in the cases enumerated in this paragraph were previously before this Court
16 as Exhibits 1 through 11 to the Supplemental Declaration of Melissa J. Baily in Support of
17 Flagstar's Motion for Sanctions Pursuant to Federal Rule of Civil Procedure 11, which was
18 submitted during the hearing on Flagstar's Motion for Sanctions on September 8, 2006.

19 21. Attached hereto as Exhibits Q, R, and S are true and correct copies of documents
20 produced by Eon-Net, L.P. in this litigation.

- 21 • Exhibit Q purports to be a letter from Eon-Net, L.P.'s outside counsel Jean-Marc
22 Zimmerman to the Chief Executive Officer of Bed, Bath & Beyond Inc., dated
23 April 13, 2007.
- 24 • Exhibit R is a substantively identical letter from Eon-Net, L.P.'s outside counsel
25 Jean-Marc Zimmerman to the President of Goya Foods, Inc., also dated April 13,
26 2007.
- 27 • Exhibit S is a substantively identical letter from Eon-Net, L.P.'s outside counsel
Jean-Marc Zimmerman to the President of Paragon Sports, Inc., also dated April
13, 2007.

28 22. Attached hereto as Exhibit T is a true and correct copy of U.S. Patent
29 No. 7,075,673.

30 23. Attached hereto as Exhibit U is a true and correct copy of U.S. Patent
31 No. 7,184,162.

1 24. Attached hereto as Exhibit V is a true and correct copy of an email from me to
2 Eon-Net L.P.'s outside counsel Jean-Marc Zimmerman, dated November 14, 2007.

3 25. Attached hereto as Exhibit W is a true and correct copy of excerpts from the
4 Deposition of Eon-Net, L.P., taken pursuant to Federal Rule of Civil Procedure 30(b)(6) on June
5 23, 2008.

6 26. A search of Pacer's U.S. Party and Case Index for "Eon-Net" and "Eon Net"
7 results in a list of more than 45 unique cases in which Eon-Net, L.P. has alleged infringement of
8 one or more of the patents at issue in this case in connection with the operation of a website. For
9 example, attached hereto as Exhibit X is a true and correct copy of a complaint filed by Eon-Net,
10 L.P. on February 25, 2009 against Avis Budget Group, Inc.

11 27. Attached as Exhibit Y is a true and correct copy of fourteen documents produced
12 by Eon-Net, L.P. in this litigation. Each purports to be a letter from Eon-Net, L.P.'s outside
13 counsel Jean-Marc Zimmerman, dated January 26, 2008.

14 28. Attached as Exhibits Z and AA are true and correct copies of documents produced
15 by Eon-Net, L.P. in this litigation.

- 16 • Exhibit Z purports to be a Settlement Agreement between Staples, Inc. and Eon-
17 Net, L.P.
- 18 • Exhibit AA purports to be a Settlement Agreement between US Airways Group,
19 Inc. and Eon-Net, L.P.

19 29. Attached as Exhibit BB is a true and correct copy of the Answer and
20 Counterclaims filed by B&H Foto & Electronics Corp. on March 3, 2009 in *Eon-Net, L.P. v.*
21 *B&H Foto & Electronics, Corp.*, Case No. 1:2009 cv 00150 (S.D.N.Y.).

22 30. Attached as Exhibit CC is a true and correct copy of an email from Eon-Net,
23 L.P.'s outside counsel Jean-Marc Zimmerman to me, dated July 24, 2008.

24 31. Attached as Exhibit DD is a true and correct copy of Eon-Net, L.P.'s Responses
25 to Defendant Burlington Coat Factory Warehouse Corporation's First Set of Claim Construction
26 Interrogatories, submitted in Case No. 1:07-cv-05578 (D.N.J.).

32. Attached as Exhibit EE is a true and correct copy of Eon-Net, L.P.'s outside counsel Jean-Marc Zimmerman's email to me, dated July 11, 2008.

33. Attached as Exhibit FF is a true and correct copy of a letter from me to Eon-Net, L.P.'s outside counsel Jean-Marc Zimmerman, dated July 25, 2008.

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 16th day of April, 2009, in New York, New York.

/s/Melissa J. Baily

Melissa J. Bailly